Senate Bill 459
By: Senators Brass of the 28th, Albers of the 56th and Watson of the 1st

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health planning and development, so as to convert a destination cancer hospital to a hospital facility for certificate of need requirements upon certain conditions; to revise a definition; to provide for payments to go to the Indigent Care Trust Fund; to repeal certain destination cancer hospital provisions relating to certificate of need; to provide for funds from the Indigent Care Trust Fund to be used for the rural stabilization program; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
This Act shall be known and may be cited as the "Rural Hospital Infusion Plan (RHIP) Act."

SECTION 2.
Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health planning and development, is amended by revising paragraphs (13) and (17) of Code Section 31-6-2, relating to definitions, as follows:

"(13) 'Destination cancer hospital' means an institution with a licensed bed capacity of 50 or less which provides diagnostic, therapeutic, treatment, and rehabilitative care services to cancer inpatients and outpatients, by or under the supervision of physicians, and whose proposed annual patient base is composed of a minimum of 65 percent of patients who reside outside of the State of Georgia. Reserved."

"(17) 'Health care facility' means hospitals; any facility granted a certificate of need before June 30, 2018, as a destination cancer hospital; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; personal care homes; ambulatory surgical centers or obstetrical facilities; health maintenance organizations; home health agencies; and diagnostic, treatment, or

S. B. 459
- 1 -
rehabilitation centers, but only to the extent paragraph (3) or (7), or both paragraphs (3) and (7), of subsection (a) of Code Section 31-6-40 are applicable thereto."

SECTION 3.

Said chapter is further amended by revising subsection (d) of Code Section 31-6-40, relating to the requirement of a certificate of need for new institutional health services, as follows:

"(d) A certificate of need issued to a destination cancer hospital prior to June 30, 2018, shall authorize the beds and all new institutional health services of such destination cancer hospital as such services were provided on June 30, 2018, including but not limited to inpatient beds, outpatient services, operating rooms, radiation therapy, imaging, and positron emission tomograph (PET) scanning, without any further action by the department or the destination cancer hospital; and thereafter such destination cancer hospital shall be deemed a hospital without any limitations of a destination cancer hospital as previously defined, including but not limited to the 50 inpatient beds and the 65 percent out-of-state patient base, and such hospital will be subject to the provisions under this chapter applicable to hospitals. As used in this subsection, the term 'new institutional health service' shall have the same meaning provided for in subsection (a) of this Code section. A certificate of need shall only be issued to a destination cancer hospital that locates itself and all affiliated facilities within 25 miles of a commercial airport in this state with five or more runways. Such destination cancer hospital shall not be required to apply for or obtain additional certificates of need for new institutional health services related to the treatment of cancer patients, and such new institutional health services related to the treatment of cancer patients offered by the destination cancer hospital shall not be reviewed under any service-specific need methodology or rules except for those promulgated by the department for destination cancer hospitals. After commencing operations, in order to add an additional new institutional health service, a destination cancer hospital shall apply for and obtain an additional certificate of need under the applicable statutory provisions and any rules promulgated by the department for destination cancer hospitals, and such applications shall only be granted if the patient base of such destination cancer hospital is composed of at least 65 percent of out-of-state patients for two consecutive years. The department may apply rules for a destination cancer hospital only for those services that the department determines are to be used by the destination cancer hospital in connection with the treatment of cancer. In no case shall destination cancer hospital specific rules be used in the case of an application for open heart surgery, perinatal services, cardiac catheterization, and other services deemed by the department to be not reasonably related to the diagnosis and treatment of cancer; provided, however, that the department shall apply the destination cancer hospital specific rules if a destination cancer hospital applies..."
for services and equipment required for it to meet federal or state laws applicable to a hospital. If such destination cancer hospital cannot show a patient base of a minimum of 65 percent from outside of this state, then its application for any new institutional health service shall be evaluated under the specific statutes and rules applicable to that particular service. If such destination cancer hospital applies for a certificate of need to add an additional new institutional health service before commencing operations or completing two consecutive years of operation, such applicant may rely on historical data from its affiliated entities, as set forth in paragraph (2) of subsection (b.1) of Code Section 31-6-42.

Because destination cancer hospitals provide services primarily to out-of-state residents, the number of beds, services, and equipment destination cancer hospitals use shall not be counted as part of the department's inventory when determining the need for those items by other providers. No person shall be issued more than one certificate of need for a destination cancer hospital. Nothing in this Code section shall in any way require a destination cancer hospital to obtain a certificate of need for any purpose that is otherwise exempt from the certificate of need requirement. Beginning January 1, 2010, the department shall not accept any application for a certificate of need for a new destination cancer hospital; provided, however, all other provisions regarding the upgrading, replacing, or purchasing of diagnostic or therapeutic equipment shall be applicable to an existing destination cancer hospital.

SECTION 4.
Said chapter is further amended by revising subsections (c) and (c.1) of Code Section 31-6-40.1, relating to acquisition of health care facilities, penalty for failure to notify the department, limitation on applications, agreement to care for indigent patients, requirements for destination cancer hospitals, and notice and hearing provisions for penalties, as follows:

“(c) The department may require that any applicant for a certificate of need agree to provide a specified amount of clinical health services to indigent patients as a condition for the grant of a certificate of need; provided, however, that each facility granted a certificate of need by the department as a destination cancer hospital prior to June 30, 2018, that converts to a hospital shall be required to:

(1) Provide uncompensated indigent or charity care for residents of Georgia which meets or exceeds 3 percent of such destination cancer hospital's adjusted gross revenues and provide care to Medicaid beneficiaries which meets or exceeds 3 percent of its adjusted gross revenue;

(2) Provide services to Medicaid patients; and
(3) Pay for five consecutive years 1 percent of its adjusted gross revenue or $1 million, whichever is lower, per fiscal year to the department to be used for purposes of the Indigent Care Trust Fund pursuant to paragraph (4) of Code Section 31-8-154. As used in this paragraph, the term 'adjusted gross revenue' is calculated by subtracting solely Medicaid and medicare contractual adjustments and bad debt from the hospital's gross revenues. The adjusted gross revenue is used as the basis for determining a hospital's level of uncompensated indigent and charity care services, and such figures generally represent a percentage of the hospital's adjusted gross revenue. A grantee or successor in interest of a certificate of need or an authorization to operate under this chapter which violates such an agreement or violates any conditions imposed by the department relating to such services, whether made before or after July 1, 2008, shall be liable to the department for a monetary penalty in the amount of the difference between the amount of services so agreed to be provided and the amount actually provided and may be subject to revocation of its certificate of need, in whole or in part, by the department pursuant to Code Section 31-6-45. Any penalty so recovered shall be paid into the state treasury.

(c.1)(1) A destination cancer hospital that does not meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state in a calendar year shall be fined $2 million for the first year of noncompliance, $4 million for the second consecutive year of noncompliance, and $6 million for the third consecutive year of noncompliance. Such fine amount shall reset to $2 million after any year of compliance. In the event that a destination cancer hospital does not meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state for three calendar years in any five-year period, such hospital shall be fined an additional amount of $8 million. It is the intent of the General Assembly that all revenues collected from any such fines shall be dedicated and deposited by the department into the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(2) In the event a certificate of need for a destination cancer hospital is revoked pursuant to this subsection, such hospital shall be subject to fines pursuant to subsection (c) of Code Section 31-6-45 for operating without a certificate of need.

(3) In addition to the annual report required pursuant to Code Section 31-6-70, a destination cancer hospital shall submit an annual statement, in accordance with timeframes and a format specified by the department, affirming that the hospital has met an annual patient base composed of a minimum of 65 percent of patients who reside outside this state. The chief executive officer of the destination cancer hospital shall certify under penalties of perjury that the statement as prepared accurately reflects the composition of the annual patient base. The department shall have the authority to inspect any books, records, papers, or other information pursuant to subsection (c) of
Code Section 31-6-45 of the destination cancer hospital to confirm the information provided on such statement or any other information required of the destination cancer hospital. Nothing in this paragraph shall be construed to require the release of any information which would violate the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191."

**SECTION 5.**

Said chapter is further amended by repealing subsection (b.1) of Code Section 31-6-42, relating to qualifications for issuance of certificate.

**SECTION 6.**

Said chapter is further amended by revising paragraphs (5), (6), and (7) of subsection (a) of Code Section 31-6-45, relating to revocation of certificate of need, enforcement of chapter, and regulatory investigations and examinations, as follows:

"(5) Failure to participate as a provider of medical assistance for Medicaid purposes pursuant to Code Section 31-6-45.2 or any other applicable Code section; or

(6) The failure to submit a timely or complete report within 180 days following the date the report is due pursuant to Code Section 31-6-70; or

(7) Failure of a destination cancer hospital to meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state for three calendar years in any five-year period;"

**SECTION 7.**

Said title is further amended by revising paragraphs (3) and (4) of Code Section 31-8-154, relating to authorized expenditure of contributed funds, and adding a new paragraph to read as follows:

"(3) For primary health care programs for medically indigent citizens and children of this state; or

(4) For support of those hospitals participating in the rural hospital stabilization program conducted by the State Office of Rural Health under the Department of Community Health; or

(4) Any combination of purposes specified in paragraphs (1) through (3) of this Code section."

**SECTION 8.**

Said title is further amended by revising subsection (b) of Code Section 31-8-156, relating to appropriation of state funds by General Assembly, as follows:
“(b) An appropriation pursuant to subsection (a) of this Code section shall specify each
purpose, if any, as specified in paragraphs (1) through (4) of Code Section 31-8-154,
for which the trust funds are appropriated thereby.”

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.