

February 2018



Governor Signs Expansion of Medical Malpractice Statute of Limitations into Law

Governor Cuomo signed S6800 of 2017 into law on January 31, 2018, as Chapter 506 of the laws of 2017. In addition, the Governor also signed S7588A of 2018 as an amendment to S6800 on January 31, 2018, as Chapter 1 of the laws of 2018. This law, effective immediately, provides that the statute of limitations in actions related to negligent failure to diagnose a malignant tumor or cancer would not begin to run until a plaintiff knew or should reasonably have known of the alleged negligent failure to diagnose and that such failure has caused injury, with a seven-year outer limit from the act or omission complained of for the commencement of such actions, or from the date of the last treatment where there is continuous treatment for the same condition. This is a significant change in these particular cases from the current statute of limitations that still applies to all other cases and, generally, which allows a plaintiff to sue within two and one-half years after the date of the act or omission that caused the injury OR two and one-half years from the date of the last treatment where there is continuous

treatment for the same condition that gave rise to the act or omission that caused the injury.

There are two retroactive clauses in the new law. For any person whose cancer or malignant tumor claim expired under the old statute of limitations rule within the 10 months prior to the effective date, they will have six months after January 31, 2018, to bring suit. If a person whose negligent diagnosis of cancer claim has not yet expired as of January 31, 2018, that person now has a claim subject to the new date of discovery rule, but only for actions or omissions occurring within two and a half years from the law's effective date. This does not alter the continuous treatment exception.

MLMIC will be offering educational programs and presentations that specifically address the new law. These programs will be provided to MLMIC policyholders throughout New York State and will offer guidance designed to manage the risks and reduce the exposures presented by this new law, all at no additional cost to our policyholders. For details regarding these programs or any questions regarding the new law, you may contact 1-888-488-9253.