STATE OF NEW YORK

6800

2017-2018 Regular Sessions

IN SENATE

June 18, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil practice law and rules, in relation to accrual of causes of action for medical, dental and podiatric malpractice

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The opening paragraph of subdivision (g) of section 203 of the civil practice law and rules is designated paragraph 1 and a new paragraph 2 is added to read as follows:

2. Notwithstanding any other provision of law to the contrary, for the purposes of sections fifty-e and fifty-i of the general municipal law, section ten of the court of claims act, and the provisions of any other law pertaining to the commencement of an action or special proceeding, or to the filing of a notice of claim as a condition precedent to commencement of an action or special proceeding within a specified time period, the period in which to commence an action or proceeding or to file such notice of claim for medical, dental or podiatric malpractice shall not begin to run until the later of either: (a) when one knows or reasonably should have known of the negligent failure to diagnose cancer or a malignant tumor whether by act or omission and knows or reasonably should have known that such negligent act or omission has caused the injury; or (b) the date of the last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the accrual of an action. However, such action shall commence no later than seven years from the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the act, omission or failure; provided, however, that where the action is based upon the discovery of a foreign object in the body of a patient, the action may be commenced within one year of the date of such discovery or of the date of discov-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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ery of facts which would reasonably lead to such discovery, whichever is earlier.

§ 2. Section 214-a of the civil practice law and rules, as amended by chapter 485 of the laws of 1986, is amended to read as follows:

§ 214-a. Action for medical, dental or podiatric malpractice to be commenced within two years and six months; exceptions. An action for medical, dental or podiatric malpractice must be commenced within two years and six months of the accrual of any such action. The accrual of an action occurs at the later of either (a) when one knows or reasonably should have known of the alleged negligent failure to diagnose a malignant tumor or cancer, whether by act or omission and knows or reasonably should have known that such negligent act or omission has caused the injury; or (b) the date of the last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the accrual of an action. However, such action shall commence no later than seven years from the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure; provided, however, that where the action is based upon the discovery of a foreign object in the body of the patient, the action may be commenced within one year of the date of such discovery or of the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. For the purpose of this section the term "continuous treatment" shall not include examinations undertaken at the request of the patient for the sole purpose of ascertaining the state of the patient's condition. For the purpose of this section the term "foreign object" shall not include a chemical compound, fixation device or prosthetic aid or device.

§ 3. With regard to any person, who within two years and six months (or in actions to which section 50-e or 50-i of the general municipal law or section 10 of the court of claims act apply, the period applicable under such sections) prior to the effective date of this act, (a) knew or reasonably should have known of a negligent act or omission constituting failure to diagnose a malignant tumor or cancer, and knew or reasonably should have known that such negligent act or omission has caused the injury, or (b) within two years and six months (or in actions to which section 50-e or 50-i of the general municipal law or section 10 of the court of claims act apply, the period applicable under such sections) of his or her last treatment where there was continuous treatment for the same illness, injury or condition giving rise to the accrual of an action for failure to diagnose a malignant tumor or cancer; notwithstanding any other provision of law to the contrary, such person's action shall be deemed to accrue on the effective date of this act and shall be commenced within two years and six months (or in actions to which section 50-e or 50-i of the general municipal law or section 10 of the court of claims act apply, the period applicable under such sections) of such effective date, provided that if an action would be timely pursuant to subdivision (a) of this section, such action must be commenced within seven years of the act or omission referred to in subdivision (a) of this section. Where a specific provision of law exists in any other provision of law which is inconsistent with the provisions of this act, such provision shall apply unless a provision of this act specifies that such provision of this act shall apply notwithstanding any other provision of law.

§ 4. This act shall take effect immediately.