Negotiated rulemaking for medically underserved populations and health professions shortage areas

**Summary**: Directs the Secretary, in consultation with stakeholders, to establish a comprehensive methodology and criteria for designating medically underserved populations and Health Professional Shortage Areas.

**Status updates**:
- On July 5, 2011, the Health Resources and Services Administration (HRSA) announced a public meeting on July 20-21, 2011.
- On July 22, 2011, HRSA announced a public meeting on August 16-17, 2011.
- On August 26, 2011, HRSA announced a public meeting on September 15, 2011.

**Next steps**:
- April 1, 2010 – Initial report from the negotiated rulemaking committee regarding consensus, allowing the Secretary to determine whether to eliminate the committee. (deadline not met)
- April 2, 2010 – Secretary must determine the facilitator for the negotiated rulemaking. (deadline not met)
- April 23, 2010 – Secretary must establish a committee for the negotiated rulemaking. (deadline not met)
- May 7, 2010 – Secretary must publish a notice regarding the negotiated rulemaking (45 days after the date of enactment). (deadline not met)
- June 1, 2010 – Final report from negotiated rulemaking committee with recommendations (if applicable and if the committee is still in existence). (deadline not met)
- July 1, 2010 – Target date for publication; Secretary required to issue an interim final rule with 90 days of comment period. (deadline not met)
- July 22, 2010 – HRSA announced through a Federal Register notice the creation of the Negotiated Rulemaking Committee on the Designation of Medically Underserved Populations (MUP) and Health Professions Shortage Areas (HPSA).
- September 22-24, 2010 – Public meetings of the Negotiated Rulemaking Committee.
- November 17-18, 2010 – Public meetings of the Negotiated Rulemaking Committee.
- January 18 – 20, 2011 – Public meetings of the Negotiated Rulemaking Committee.
- February 16-18, 2011 -- Public meetings of the Negotiated Rulemaking Committee.
- April 3 – Deadline for requesting to provide public comments.
- May 18-20, 2011 -- Public meetings of the Negotiated Rulemaking Committee.
- June 22-24, 2011 -- Public meetings of the Negotiated Rulemaking Committee.
July 1, 2011 – Final rule due. (deadline not met)
July 20-21, 2011 -- Public meetings of the Negotiated Rulemaking Committee.
August 16-17, 2011 -- Public meetings of the Negotiated Rulemaking Committee.
September 15, 2011 – Public meeting of the Negotiated Rulemaking Committee.
September 20 -22, 2011 -- Public meeting of the Negotiated Rulemaking Committee.

**Additional information:**
- HRSA information regarding HPSA or MUP designations -- [http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx](http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx)
- HRSA information on HPSAs eligible for Medicare physician payment bonuses -- [http://datawarehouse.hrsa.gov/geoHPSAAdvisor/](http://datawarehouse.hrsa.gov/geoHPSAAdvisor/)

**Long summary:**
Sec. 5602. Negotiated rulemaking for development of methodology and criteria for designating medically underserved populations and health professions shortage areas.
Directs the Secretary, in consultation with stakeholders, to establish a comprehensive methodology and criteria for designating medically underserved populations (MUAs) and Health Professional Shortage Areas (HPSAs) through a negotiated rulemaking process. In formulating the rulemaking, the Secretary must take into account (1) the timely availability and appropriateness of data used to determine a designation to potential applicants for such designations; (2) the impact of the methodology and criteria on communities of various types and on health centers and other safety net providers; (3) the degree of ease or difficulty that will face potential applicants for such designations in securing the necessary data; and (4) the extent to which the methodology accurately measures various barriers that confront individuals and population groups in seeking health care services.

The target date for publication of the interim final rule is July 1, 2010. The final rule, based on consideration of public comment, is due one year later. (Note: Given the timelines in the legislation, it is unclear how HRSA would be able to accomplish this under the outlined timeframe.)

**Legislative text:**

SEC. 5602. NEGOTIATED RULEMAKING FOR DEVELOPMENT OF METHODOLOGY AND CRITERIA FOR DESIGNATING MEDICALLY UNDERSERVED POPULATIONS AND HEALTH PROFESSIONS SHORTAGE AREAS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish, through a negotiated rulemaking process under subchapter 3 of chapter 5 of title 5, United States Code, a comprehensive methodology and criteria for designation of—

(A) medically underserved populations in accordance with section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3));

(B) health professions shortage areas under section 332 of the Public Health Service Act (42 U.S.C. 254e).

(2) FACTORS TO CONSIDER.—In establishing the methodology and criteria under paragraph (1), the Secretary—

(A) shall consult with relevant stakeholders who will be significantly affected by a rule (such as national, State and regional organizations representing affected entities), State health offices, community organizations, health centers and other affected entities, and other interested parties; and

(B) shall take into account—

(i) the timely availability and appropriateness of data used to determine a designation to potential applicants for such designations;

(ii) the impact of the methodology and criteria on communities of various types and on health centers and other safety net providers;

(iii) the degree of ease or difficulty that will face potential applicants for such designations in securing the necessary data; and

(iv) the extent to which the methodology accurately measures various barriers that confront individuals and population groups in seeking health care services.

(b) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary shall publish the notice provided for under section 564(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of this Act.

(c) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under subsection (b), and for purposes of this subsection, the “target date for publication”, as referred to in section 564(a)(5) of title 5, United States Code, shall be July 1, 2010.

(d) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

(1) the appointment of a negotiated rulemaking committee under section 565(a) of title 5, United States Code, by not later than 30 days after the end of the comment period provided for under section 564(c) of such title; and

(2) the nomination of a facilitator under section 566(c) of such title 5 by not later than 10 days after the date of appointment of the committee.

(e) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under subsection (d) shall report to the Secretary, by not later than April 1, 2010, regarding the committee’s progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress toward such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this section through such other methods as the Secretary may provide.

(f) FINAL COMMITTEE REPORT.—If the committee is not terminated under subsection (e), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

(g) INTERIM FINAL EFFECT.—The Secretary shall publish a rule under this section in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 90 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications for such designations pursuant to such rules and consistent with this section.

(h) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.