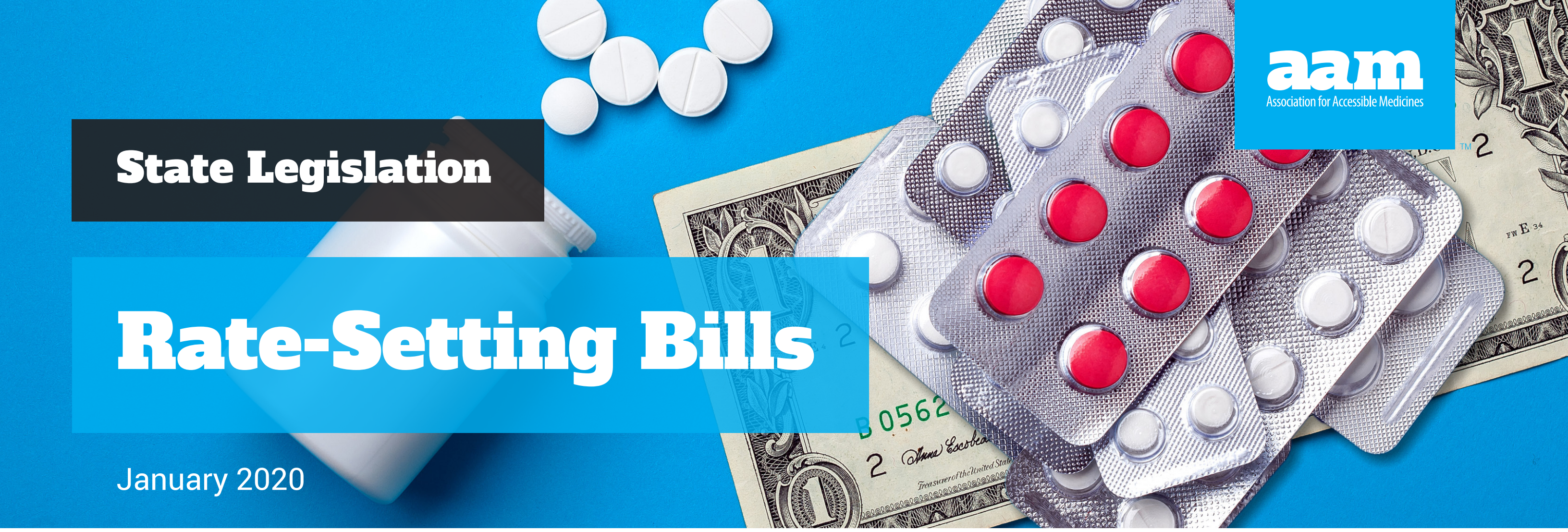

aam
Association for Accessible Medicines

State Legislation

Rate-Setting Bills

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Rate-setting laws may work for public utilities, but not for prescription medicines.

- Public utilities like power and water companies are often provided by a single supplier in a specific and narrowly defined geographic area.
- Generic drugs, on the other hand, operate in a robust national market, with more than 200 registered generic manufacturers in a market where prices rapidly change.
- Utilities prices are often high due to high fixed costs of legacy monopolies.
- Generic prices fall rapidly due to a hypercompetitive market – declining more than 60 percent since 2010.
- Unlike utilities, generic drugs are regulated by the federal government in a manner specifically designed to encourage entry into the marketplace by multiple suppliers, thereby reducing drug costs through competition rather than price controls.

States have no more authority to enact "rate setting" laws than "price fixing" laws.

- States have no power or authority to enact rate setting laws that will impose burdens on the interstate distribution of prescription drugs. Rate-setting laws would create the same burdens on interstate commerce as price setting laws found to be unconstitutional.

  Rate setting would be triggered by the prices established by pharmaceutical manufacturers, prices that are set for a national market, not specifically for any particular state.

  Rate setting laws would control the prices of transactions that occur outside the state, since wholesalers and pharmacies often conduct business across state lines.

  If rate setting laws were enacted in multiple states, the differing requirements would impose a significant – and unconstitutional – burden on interstate commerce involving prescription drugs.

- Federal courts routinely invalidate state laws that attempt to set prices for prescription drug products. For example, Maryland's first-of-its-kind law setting prices for generic drug products was struck down in 2019 by a federal appeals court on the grounds that it was unconstitutional. The Court ruled that the Maryland law placed an inappropriate burden on interstate commerce in prescription drugs.

Rate-setting laws could limit treatment options.

- Under rate-setting proposals, rates for a drug product can be capped if state reviewers determine that the costs of the drug "exceed the therapeutic benefit relative to other therapeutic options/alternative treatments." State reviewers are not qualified to undertake this complex medical review weighing the benefits of one treatment versus another. Yet their decisions could result in rate limitations that cause some medicines to be withdrawn from the marketplace, thereby severely limiting treatment options for state patients.

Price controls will exacerbate drug shortages.

- The United States already has a significant problem with drug shortages. According to FDA's website, there are over 100 different drug products that are "currently in shortage." These shortages are often caused when individual drug products are no longer profitable for manufacturers to produce and sell. Imposing price controls into this type of market dynamic could force manufacturers to discontinue more generic drugs, thereby worsening the current drug shortage situation.