

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Consumer Protection
and Safety Division**

**Resolution TL-19040
July 8, 2004**

RESOLUTION

**RESOLUTION REVISING MAXIMUM RATE TARIFF 4 TO
IMPLEMENT PROVISIONS OF ASSEMBLY BILL 845**

SUMMARY

This resolution adopts revisions to the Commission's Maximum Rate Tariff 4 (MAX 4) to implement provisions of Assembly Bill (AB) 845. New and revised tariff pages are effective 60 days after the effective date of this resolution.

BACKGROUND

MAX 4 contains maximum rates, rules, and regulations applicable to the transportation of used household goods and personal effects over the public highways within California by household goods carriers. The Commission is empowered to adopt such maximum rates, rules, and regulations pursuant to the Household Goods Carriers Act (Public Utilities Code Section 5101 et seq.).

AB 845 (Statutes of 2003, Chapter 646) made several revisions to the Household Goods Carriers Act effective January 1, 2004. Generally, the revisions (1) strengthen certain existing enforcement provisions and add new enforcement measures, (2) clarify the licensing requirements of subhaulers engaged to transport used household goods and their liability for shipment loss or damage, (3) create new carrier notification requirements concerning the maximum charges the shipper will be required to pay upon delivery of its goods, and (4) provide for a lien against household goods by a licensed carrier that is extinguished when the shipper pays the maximum charges allowed under MAX 4.

MAX 4 currently requires carriers to provide each shipper of used household goods with a "Not to Exceed Price." This is the maximum amount the shipper shall be charged, including the charge for any additional services requested by

the shipper as shown on a Change Order For Services.¹ The Not to Exceed Price must be issued to the shipper no later than the day of the move, but prior to the carrier performing any services.

The Commission's Consumer Protection and Safety Division (CPSD) reports encountering cases where the shipper is given a Not to Exceed Price that is not reasonably related to the specific circumstances of the move. For example, the carrier might routinely enter on its shipping documents an unduly high Not to Exceed Price of \$5,000 or \$10,000, without any regard to the actual number of articles to be transported, the shipment weight, the distance to be moved, or other factors affecting the transportation charges. In such instances the Not to Exceed Price affords the shipper little in the way of useful information or protection. An unscrupulous carrier might engage in this practice as a means of assessing inflated transportation charges. As leverage to collect the inflated charges, the carrier might hold the shipper's goods "hostage" and threaten to auction or otherwise dispose of them.

CPSD advises that the illegal holding of a shipper's goods hostage to extract additional transportation charges is a problem that occurs in California and elsewhere. It reports receiving complaints of this nature from shippers, primarily against carriers located in Southern California. CPSD further reports that the offices of the Los Angeles City Attorney and the state Attorney General have been active in prosecuting carriers accused of this illegal practice.²

DISCUSSION

Two new statutes created by AB 845 (Sections 5142 and 5143) will improve the information shippers receive in advance about the transportation charges they are obligated to pay, will provide them with a better understanding of their rights under the law, and will give them specific remedies for violations. As a consequence, the number of cases of abuse described above should be reduced.

¹ At its option, the carrier may, after a visual inspection of the goods, provide the shipper with a written Estimated Cost of Services (Estimate) for the services described thereon. In such cases, the maximum charge the shipper shall pay is the amount of the Estimate plus the charges on a Change Order for Services, if any.

² These offices assisted the authors of AB 845 in drafting the bill language.

Section 5142 provides that a carrier holding a valid permit from the Commission has a lien on used household goods and personal effects that is extinguished once the shipper pays the maximum total dollar amount it agreed to in advance in writing.³ That dollar amount shall not be preprinted on any form, shall be just and reasonable, and shall be established in good faith by the carrier based on the specific circumstances of the services to be performed.

Section 5143 requires the carrier to provide a notice to each shipper at least three days before the scheduled move date, or as soon as practicable if the request for service is made less than three days in advance, that contains a "Not to Exceed" amount. The notice informs the shipper of certain rights, including that the carrier cannot refuse to release the shipper's goods once the Not to Exceed amount has been paid.

CPSD has drafted new and revised pages to MAX 4 to implement Sections 5142 and 5143. It has also drafted one revised tariff page to correct a previous omission. The tariff items and pages concerned are briefly described below.

- Table of Contents (Pages ii and iii)
Adds new Items 130 and 465.
- Item 4 – Definition of Technical Terms (Page 2)
Revises definitions of Consignee, Consignor, and Not to Exceed Price.
- Item 104 – Collection of Charges (Page 24)
Adds a note explaining the lien provisions of Section 5142.

³ No lien attaches to food, medicine, or medical devices, items used to treat or assist an individual with a disability, or items used for the care of a minor child. Section 5142 exclusively establishes and provides for a lien on used household goods and personal effects, notwithstanding any other law (e.g., provisions of the Commercial Code).

- Item 128 – Agreement for Services (Pages 31, 32, and 33)
Adds a note concerning the Not to Exceed Price and corrects an omission from a prior printing.
- Item 130 – Important Notice About Your Move (Page 33-A)
Describes the new notice requirements of Section 5143.
- Item 465 – Important Notice About Your Move (Page 88-A)
Prescribes the wording and format of the notice required by Section 5143.
- Item 470 – Important Information For Persons Moving Household Goods (Page 98)
Adds information to the booklet given to every prospective shipper concerning the lien provisions of Section 5142.

The above draft tariff pages are attached as Appendix A. (Revisions to existing pages are shown in bold italics.) These pages include a new form (Item 465) and revise the information booklet carriers must give to each prospective shipper (Item 470). Therefore, CPSD recommends the pages be made effective 60 days from the effective date of this resolution to give carriers adequate printing time.

COMMENTS ON DRAFT RESOLUTION

To comply with Pub. Util. Code § 311(g), CPSD commenced publication of a Daily Calendar notice on March 17, 2004, that apprised the public of the availability of this draft resolution and solicited submission of comments by April 6, 2004. Copies of the draft resolution were mailed to the California Moving and Storage Association (CMSA) and offices of the Los Angeles City Attorney and the state Attorney General.

Comments were received on April 2, 2004, from CMSA.⁴ CMSA requests that the new and revised tariff pages be made effective 120 days after the effective date of this resolution. It states that its members will look to CMSA to provide education on the new tariff requirements. CMSA intends to conduct six to eight seminars throughout the state, which will take time to plan and present. It asserts that its president is the only employee capable of conducting the

⁴ CMSA represents approximately 450 of the 1,050 household goods carriers licensed by the Commission.

seminars. CMSA also states that a 60-day effective date would place implementation in the peak summer season when 40% of residential moves occur.

While CMSA's planned seminars may prove to be helpful to its members, they are not critical to implementation of the new tariff requirements. If education for members is necessary, other options may be possible, such as informational mailings. We believe that consumers should be afforded the benefits of AB 845 as early as possible. Therefore, we will follow CPSD's recommendation and make the new and revised tariff pages effective 60 days after the effective date of this resolution.

FINDINGS

1. The Commission regulates carriers of used household goods pursuant to provisions of the Household Goods Carriers Act (Pub. Util. Code § 5101 et seq.).
2. MAX 4 contains maximum rates, rules and regulations established by the Commission under authority of the Household Goods Carriers Act.
3. AB 845 made revisions to the Household Goods Carriers Act effective January 1, 2004.
4. Newly enacted § 5142 establishes lien provisions exclusive to the transportation of used household goods and personal effects.
5. Newly enacted § 5143 establishes notice requirements concerning the maximum amount shippers of used household goods and personal effects can be required to pay for the release and delivery of their goods.
6. Revisions to MAX 4 are necessary to implement provisions of AB 845.
7. One page of MAX 4 requires correction.
8. Because carriers will be required to have new forms printed, the effective date of the new and revised MAX 4 pages should be 60 days after the effective date of this resolution.

THEREFORE, IT IS ORDERED that:

1. Maximum Rate Tariff 4 is amended by incorporating the new and revised tariff pages attached as Appendix A, effective 60 days from the effective date of this resolution.
2. The Executive Director shall cause a copy of this resolution to be mailed to every licensed household goods carrier, the California Moving and Storage Association, and offices of the Los Angeles City Attorney and the state Attorney General.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on July 8, 2004. The following Commissioners voted favorably thereon:

WESLEY M. FRANKLIN
Deputy Executive Director

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

APPENDIX A

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MAXIMUM RATE TARIFF 4

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* Change, Resolution TL-19040

EFFECTIVE SEPTEMBER 6, 2004

**Issued by the Public Utilities Commission of the State of California
 San Francisco, California**

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San Francisco, California**

MAXIMUM RATE TARIFF 4

Item 4 */ø

DEFINITION OF TECHNICAL TERMS

CARRIER means household goods carrier as defined in the Household Goods Carriers Act.

COMMISSION means the Public Utilities Commission of the State of California.

COMPONENT PART means any part of a shipment separately received by the carrier whether or not such part is separately delivered by the carrier, and any part of a shipment separately delivered by the carrier whether or not such part is separately received by the carrier.

CONSIGNEE means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person's agent.

CONSIGNOR means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person's agent.

CREDIT CARD means a card defined in Section 484(d) of the Penal Code of the State of California, other than a card issued by the carrier, including bank credit cards and cards issued by major credit card companies.

DEBTOR means the person(s) and/or corporation(s) obligated to pay a freight charge of a carrier.

DISTANCE TABLE means Distance Table 8 issued by the Commission, or successive issues, thereof, or any other distance table authorized by the Commission for use in connection with rates provided in this tariff.

ESTIMATED COST OF SERVICES means a written document prepared by the carrier and furnished to the shipper, which shows the total cost estimated by the carrier for the services as described thereon.

MAXIMUM FIXED RATE means any specific rate named in this tariff. Carriers may not charge a higher rate than a maximum fixed rate, except under the rules in Item 108 (Estimated Cost of Services).

MOTOR VEHICLE means any motor truck, tractor or other self-propelled highway vehicle used for transportation of property over the public highways, and any trailer, semi-trailer, dolly or other vehicle drawn thereby.

NOT TO EXCEED PRICE means the maximum charge that may be assessed on a shipment, as enumerated on the Agreement for Moving Services, and as entered on the Important Notice About Your Move, subject to any bona fide Change Order for Services.

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San Francisco, California**

MAXIMUM RATE TARIFF 4

ITEM 104 *
COLLECTION OF CHARGES

1. Transportation and accessorial charges may be collected by carriers prior to relinquishing physical possession of shipments entrusted to them for transportation. Whether carrier believes other charges are due or not, carrier must unload a shipment at destination upon payment of the Not To Exceed Price, plus all charges on valid Change Orders for Services. Payment of charges may be made by credit card, which shall be considered to be payment in cash for the purpose of this item. (See NOTE.)
2. Upon taking sufficient precautions to assure payment of charges, carriers may relinquish possession of freight in advance of payment of charges thereon and may extend credit in the amount of charges to those who undertake to pay them, such persons herein being called debtors.
3. Where a carrier has relinquished possession of freight and collected the amount of charges represented in the freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the debtor, the carrier may extend credit in the amount of such additional charges.
4. Freight bills for all transportation and accessorial charges shall be presented to debtors within seven (7) calendar days from the first 12 o'clock midnight following delivery of the freight.
5. Debtors may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by carrier, as evidenced by postmark, shall be deemed to be the time of presentation of the freight bills.
6. For the purpose of this item, the mailing by debtor of satisfactory means (to carrier) of payment of freight charges, such as valid checks, drafts, or money orders, within the allowed credit period may be deemed to be the collection of charges within the credit period. In case of dispute as to time of mailing, the postmark shall be accepted as showing such time.

NOTE: A household goods carrier holding a valid permit from the Commission has a lien on used household goods and personal effects to secure payment in the amount of the Not To Exceed Price as agreed to in writing by the Consignor in accordance with Items 128 and 130, including the amount of any bona fide Change Order issued under Item 120, for transportation and additional services ordered by the Consignor. No lien attaches to food, medicine, or medical devices, items used to treat or assist an individual with a disability, or items used for the care of a minor child. Upon payment to the carrier of the amount of the Not To Exceed Price, plus the amount of any bona fide Change Order, the lien is extinguished and all household goods and personal effects shall be released to the consignee.

* Change, Resolution TL-19040

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San Francisco, California

MAXIMUM RATE TARIFF 4

ITEM 128 (Continued) *
AGREEMENT FOR MOVING SERVICES

- (h) Points of origin and destination.
- (i) Description of shipment, in sufficient detail to determine the articles and services included in the Not To Exceed Price.
- (j) Description of transportation and accessorial services to be performed (including number of helpers and number of packers to be provided).
- (k) Rates and charges quoted for the services described in the documents, including any minimums (hours, weights, packing materials and per pound valuation requirements). (See NOTE 2.)
- (l) Valuation of shipment. (See NOTES 3 and 4.)
- (m) Signatures of carrier and shipper.
- (n) Name, address and telephone number of a person to whom notification provided for in Item 100 shall be given, except when this cannot be obtained from shipper.
- (o) Preferred delivery date or time period within which delivery may be expected at destination.
- (p) Whether payment is to be made in cash, check, or by credit card.
- (q) A Not To Exceed Price showing the maximum amount that may be charged for services listed. This will be the total amount shown on the Estimated Cost of Services, when issued, plus the total amount shown on any Change Order for Services (Change Order) issued before the Agreement is signed. Change Orders issued after the Agreement is signed will affect the Not To Exceed Price directly. (See NOTE 5.)
- (r) A Consumer Protections and/or Waivers section as set forth in Item 450. Each of the following elements shall be included:
 - (1) Explanation of carrier's obligation to ensure shipper has received the booklet "Important Information for Persons Moving Household Goods." Shipper must initial a statement "I have received the booklet".
 - (2) Explanation of all loss and damage protection options. Shipper shall make a valuation declaration.
 - (3) Explanation of carrier's obligation to ensure shipper has the Agreement no less than three (3) days before the day of the move, and the conditions under which said obligation is nullified.

* Change, Resolution TL-19040

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 San Francisco, California

MAXIMUM RATE TARIFF 4

**ITEM 128 (Continued) *
AGREEMENT FOR MOVING SERVICES**

(4) Shipper's signature.

3. The form of the Agreement in Item 450 will be suitable and proper. The format may be that most convenient for carrier. Such form may be combined with the shipping document into a single document, provided that:

- (a) such single document (and its issuance) is in compliance with the provisions of this item and Item 132;
- (b) such single document is properly identified as to what it purports to be; and
- (c) carrier maintains a copy of the signed Agreement separate from the shipping document.

4. The original or duplicate documents (including a Master Agreement if one is referenced) shall be retained and preserved by the issuing carrier, subject to Commission inspection, for a period of not less than three (3) years from date issued for all documents except Master Agreements. Master Agreements shall be retained for a period of not less than three (3) years from date of expiration or cancellation.

5. The carrier must relinquish possession of the shipment upon payment of the applicable Not To Exceed Price plus the charges for all services listed on a Change Order issued after the Agreement is signed. Charges collected by carrier in excess of those based on rates quoted in the Agreement, Estimate, and/or Change order shall be refunded to debtor within ten (10) days of collection.

6. In the event of conflicting valuation declarations, valuation protection levels and/or rates for valuation, the figures and levels indicated on the Agreement will apply, except when a Change Order that indicates different valuation figures or levels is issued.

NOTE 1: Carrier shall request of shipper, a notification party and notification address or telephone number. When shipper cannot furnish such information, or declines to do so, that fact must be shown on the document.

NOTE 2: The following statement shall be placed upon the document:

IMPORTANT NOTICE

(a) No rates higher than the Maximum Fixed Rates promulgated in the California Public Utilities Commission's Maximum Rate Tariff 4 may be quoted or charged, unless an Estimated Cost of Services has been issued three (3) days or more before the day of the move.

*** Change, Resolution TL-19040**

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San Francisco, California**

MAXIMUM RATE TARIFF 4

ITEM 128 (Concluded) *
AGREEMENT FOR MOVING SERVICES

The Not To Exceed Price shall be no higher than the Estimated Cost of Services plus any Change Order for Services issued prior to signing this Agreement. The maximum charge shall be the quoted rates applied to: the number of hours, weight, or number of other units of measurement, but no higher than the Not To Exceed Price.

(b) Copies of the California Public Utilities Commission's Maximum Rate Tariff 4 are open for public inspection at the Commission's offices in San Francisco and Los Angeles at the carrier's office: _____.
 (designate location)

NOTE 3: The following statement shall be placed on the Agreement in the Consumer Protection and/or Waivers section under the heading VALUATION DECLARATION:

NOTICE: Coverage For Loss And Damage Is Limited To The Actual Cash Value Of Losses Up To The Amount Of \$20,000 Unless The Shipper Signing This Contract Inserts In The Space Below, In His (Or Her) Own Handwriting, Another Value. You May Be Charged For Coverage Provided Other Than \$.60 Per Pound Per Article.

Shipper hereby releases the entire shipment to a value not exceeding
 \$ _____
 (To be completed by shipper signing below.)

(As provided in Item 450, each valuation option offered by carrier must be listed, with carrier's charge, and a space for shipper to initial choice of coverage. In addition, if carrier elects to apply a minimum per pound valuation level, the carrier must so state.)

NOTE 4: The following statement shall be placed on the Agreement: EXECUTION OF THE AGREEMENT DOES NOT EXEMPT CARRIER FROM COMPLIANCE WITH ANY PROVISION OF LAW OR PUBLIC UTILITIES COMMISSION RULES OR REGULATIONS, EVEN THOUGH NOT EXPRESSLY SET FORTH IN THE AGREEMENT.

NOTE 5: The Not To Exceed Price may not be preprinted, shall be just and reasonable, and shall be established in good faith based on the specific circumstances of the services to be performed.

* Change, Resolution TL-19040

EFFECTIVE SEPTEMBER 6, 2004

Issued by the Public Utilities Commission of the State of California
 San Francisco, California

MAXIMUM RATE TARIFF 4**ITEM 130 *****IMPORTANT NOTICE ABOUT YOUR MOVE**

At least three days prior to the date scheduled for the transportation of household goods or personal effects, the consignor shall be provided with a completed "Important Notice About Your Move" containing a Not To Exceed amount for the transportation and related services described. If the consignor requests services on a date that is less than three days before the scheduled date for transportation of the household goods or personal effects, the carrier shall provide the notice as soon as practicable, but in no event may the carrier commence any services until the consignor has signed and received a signed copy of the notice. The carrier shall obtain sufficient information from the consignor to fill out the form and shall include the correct maximum amount and a sufficient description of services that will be performed. The maximum amount shown shall not be preprinted, shall be just and reasonable, and shall be established in good faith by the carrier based on the specific circumstances of the services to be performed.

The Not To Exceed amount set forth in the notice, and in the Agreement For Moving Services issued in accordance with Item 128, shall be the maximum total dollar amount for which the consignor may be liable for the transportation of household goods and personal effects and any additional services ordered by the consignor (including any valid Change Order For Services issued under Item 120) and agreed to by the consignor before any goods or personal effects are moved from their location or any other services are performed.

The carrier may provide the notice set forth in this item either as a separate document or by including it as the centerfold of the informational booklet required to be issued in accordance with Item 88, Paragraph 9. If the carrier provides the notice as part of the informational booklet, the booklet shall contain a tab that extends beyond the edge of the booklet at the place where the notice is included. The statement "Important Notice" shall be printed on the tab in at least 12-point boldface type. In addition, the statement "Customer Must Read and Sign The Important Notice In The Middle Of This Booklet Before a Move Can Begin" shall be set forth in 14-point boldface type on the front cover of the booklet.

The notice shall be in the form contained in Item 465. It shall be printed in at least 12-point type, except the title and first two paragraphs, which shall be printed in boldface type. The carrier shall retain a copy of the notice for not less than three (3) years from the date the notice was signed by the consignor. Any waiver of the requirements of this item is void and unenforceable.

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MAXIMUM RATE TARIFF 4

**ITEM 465 *
IMPORTANT NOTICE ABOUT YOUR MOVE**

IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A "NOT TO EXCEED" AMOUNT THAT YOU THINK IS A PROPER AND REASONABLE FEE FOR THE SERVICES YOU ARE REQUESTING. THE "NOT TO EXCEED" AMOUNT THIS MOVER IS REQUESTING IS \$_____ to perform the following services:

IF YOU DO NOT AGREE TO THE "NOT TO EXCEED" AMOUNT LISTED OR THE DESCRIPTION OF SERVICES, YOU HAVE THE RIGHT TO REFUSE THE MOVER'S SERVICE AT NO CHARGE TO YOU.

If you request additional or different services at the time of the move, you may be asked to complete a Change Order which will set forth your agreement to pay for additional fees for those newly requested services. If you agree to the additional charges on that Change Order, those charges may be added to the "NOT TO EXCEED" amount set forth above. If you do not agree to the amounts listed in the Change Order, you should not sign it and may refuse the mover's services.

A mover cannot refuse to release your goods once you have paid the "NOT TO EXCEED" amount for the transportation of your goods and personal effects and any additional services that you have agreed to in writing. The "NOT TO EXCEED" amount must be reasonable.

A mover cannot, under any circumstances, withhold food, medicine, medical devices, items to treat or assist a disabled person, or items used for care of a minor child. An unlicensed mover has no right to withhold your goods for any reason including claims that you have not adequately paid for services rendered.

For additional information or to confirm whether a mover is licensed by the Public Utilities Commission, please call the Public Utilities Commission toll free at 1-800-366-4782.

I have completed this form and provided the consumer (shipper) with a copy of this notice.

Signed _____ Dated _____

I have been provided with a copy of this form.

Signed _____ Dated _____

*** Change, Resolution TL-19040**

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San Francisco, California**

MAXIMUM RATE TARIFF 4

ITEM 470 (Continued) */Ø
IMPORTANT INFORMATION FOR PERSONS MOVING
HOUSEHOLD GOODS (within California)

The PUC has no authority to compel carriers to settle claims for loss or damage and will not undertake to determine whether the basis for, or the amount of, such claims is proper, nor will it attempt to determine the carrier's liability for such loss or damage. If both you and the carrier consent, the claim may be submitted to an impartial arbitrator for resolution. You may also commence a suit in small claims court or other court of law. If arbitration or civil action result in a decision in your favor and the carrier fails to comply, contact the PUC.

IF YOUR NEW HOME IS NOT READY

If you cannot move into your new home or apartment immediately, you may wish to have your goods moved from your present residence and held in storage for later delivery. For a storage period of 90 days or less, you can request Storage-in-Transit. Separate charges will be assessed for the transportation to your new residence. Storage and handling charges will be assessed for this service and it will be covered by the terms and conditions of your Agreement with the moving company.

If you do not request Storage-in-Transit, or if your storage period exceeds 90 days, your goods will be subject to rates, terms, and conditions set by the local warehouse and the service will be under separate contract with the warehouseman and not regulated by the PUC.

PAYING FOR YOUR MOVE

Most carriers insist that you pay in cash, by money order or certified check; however, you may arrange in advance for the carrier to extend you credit. If the carrier will accept payment by credit card or personal check, be sure this arrangement is noted on the agreement.

A carrier holding a valid permit from the Commission has a lien on your goods to secure payment of the moving charges you agreed to in writing before the move began plus the charge for any additional services you requested on a bona fide Change Order For Services. (The lien does not apply to food, medicine, medical devices, items used to treat or assist an individual with a disability, or items used for the care of a minor child.) Once you pay these authorized charges, the lien is extinguished and the carrier must release all of your goods. If the driver requires payment greater than the authorized charges, you should contact the mover about what may be an overcharge. If the matter cannot be resolved to your satisfaction, call the PUC for assistance at 1-800-FON-4PUC (1-800-366-4782).

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