



## **MED (Medical Encrypted Data) Token**

*“The future of payments in Healthcare”*

I am writing about a topic: Merchant processing. You might think it is innocuous, and you have been told that your merchant processing is compliant. But does it meet the requirements of state data and federal privacy statutes? Consider your current merchant processing contract in conjunction with those state and federal privacy laws, and state common law such as data theft, negligence, and an invasion of privacy.

Let me give you the lay of the land. As you may have read, data privacy has become very important. Civil lawsuits are flying about, and regulators are fining and suing businesses at an ever-increasing pace. At the same time, technology is advancing to protect the privacy of your patients' data. One vulnerability that you may not have considered is merchant processing. Let me explain how it works today and then explain the technological advance from Fluid Financial who created the MED Token.

A patient, Tom Smith checks out of Dr. Jones and pays with his credit or debit card. Dr. Jones unknowingly allowed Mastercard, Visa, American Express, and/or Discover to collect and use that data, indicating that Tom Smith went to Dr. Jones on date X and paid amount Y. Up until now, Tom Smith had no way to prevent his credit or debit card company from knowing what services or products he purchased, from where or when. However, with Fluid's Med Token, which obtains permission to move the data to the Gateway company, the first of five steps to your bank statement, and de-identifies it for all others who touch the data, such as Mastercard, Visa, American Express, Discover, and your bank. What does that mean to Tom Smith? Tom Smith will see on his bank statement, e.g. #2d6j, for \$20.00 on his credit card statement or bank statement. Visa or one of the other card companies will see that symbol, as will the acquiring bank and the merchant processor. The only one of the five entities in the process who will know the true purchase of goods or services will be the gateway company, which obtains permission to receive and store the data. EVERY LAWYER WILL TELL YOU IF DATA IS DE-IDENTIFIED, THAT IS THE SAFEST COURSE TO AVOID VIOLATING FEDERAL OR STATE PRIVACY STATUTES, OR RUNNING AFOUL OF COMMON LAW CLAIMS OF NEGLIGENCE, DATA THEFT, OR INVASION OF PRIVACY.

As we know very well in medicine, technological advances can change the legal landscape. We urge you to talk to your attorney to find out the cost of analyzing the following issues as to regulatory liability and/or civil liability, including class actions against your practice for the failure to de-identify your merchant processing transactions. Ask her if she can give you a definitive answer to each issue. Ask him how much it will cost to defend you as to a regulatory fine, a civil lawsuit, or a class action lawsuit. Ask her if you are sued on a theory of data theft or invasion of privacy, if you have any insurance coverage. Ask your attorney if you have any insurance coverage as to fines from a federal or state regulator. YOUR ATTORNEY WILL NOT BE ABLE TO ASSURE YOU THAT YOU HAVE NO EXPOSURE . THEY WILL SUGGEST THAT YOU DE-IDENTIFY YOUR PATIENTS' DATA.

Question one: In light of the abrogation of the Chevron Doctrine, can you, as my attorney, definitively state that neither HIPAA nor the 21st Century Cures Act, individually or read together, requires permission by Tom Smith for each of the five entities in the merchant processing process to see Tom's data? How much will that analysis cost me? How much will it cost to defend the lawsuit if individual or class action? What is the exposure for damages? What is the cost of defending an imposition of a fine? What is the fine exposure for fines?

Question two: If Federal law does not impact me, does state data privacy law impact me? Is it the law of my state as the doctor, the state of Tom Smith, the gateway company, the state of the merchant processor, the acquiring bank, or the credit or debit card company, or the state of my bank? How much will that analysis cost me? How much will it cost to defend the lawsuit if it is an individual or class action? What is the exposure for damages? What is the cost of defending an imposition of a fine? What is the fine exposure for fines?

Question three: What are my duties under my current merchant processing contract? Does either duty under Federal law or State Data privacy law get imbued into that contract? If so, what does that mean? How much will that analysis cost me? How much will it cost to defend the lawsuit if it is an individual or class action? What is the exposure for damages?

**Question four:**

Do I have exposure under a theory of negligence, data theft, and/or invasion of privacy? Which law applies? Is it the law of my state as the doctor, the state of Tom Smith, the gateway company, the state of the merchant processor, the acquiring bank or the credit or debit card company, or the state of my bank?

How much will that analysis cost me?

How much will it cost to defend the lawsuit if individual or class action?

How much is the exposure for damage?

Please keep in mind the following information:

Fluid Financial is the only company in the United States that we believe has merchant processing De-identification technology. This technology allows for the processing of merchant transactions and the de-identification of patient information and data.

You can continue to pay the same rate you are currently paying, with an additional 25 cents per transaction and a monthly fee of \$39.99. By switching to this service, you can avoid costs and take the safest route to prevent fines and civil liability. Make the switch quickly to benefit from these advantages.

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