



# 摘要

《保险法》十七条规定了保险人的明确说明义务的履行对象是投保人，但就团体保险中保险人的明确说明义务没有做明确的规定。有的法院适用保险法上的一般规定来审理有关团体保险中明确说明义务的案件，判决保险人的明确说明义务的履行对象并不包括被保险人，但是此种审判结果可能会违背法律的基本价值即公平，有的法院占在弱势群体即被保险人这一方的利益，认为保险人的明确说明义务包括被保险人，在司法实践中出现了法院判决不一的现象。

为了解决这一有损于司法权威的现象，笔者通过文献回顾以及案例研究的方法分析问题。已有的文献就此问题分为两方观点，认为保险人的明确说明义务的履行对象包括被保险人的一方从诚实信用原则、合意原则、金融消费者的特殊保护和保险法的立法目的进行论证，另一方认为保险人的明确说明义务的履行对象并不包括被保险人，其主要原因有投保人是团体保险合同的当事人，基于主体的权利义务的相对性，不应扩大保险人的义务。已有的文献虽然对此进行了详细的研究，但是并没有回应对方的观点，也没有从相关的案例具体分析法官在司法实践中究竟该如何处理此类问题。

笔者就两方观点经过思考作出自己的选择，认为保险人的明确说明义务的履行对象包括被保险人。主要从两个方面进行论证，一方面从团体保险制度发展的历史、团体保险的特殊性以及《保险法》的立法目的对认为团体保险中保险人的明确说明义务的履行对象不包括被保险人这种观点的否定，另一方面从团体保险签订过程的特点和双方当事人利益平衡原则的角度出发补充了团体保险中保险人的明确说明义务履行对象包括被保险人的观点进行补充。从这个基本问题出发，然后说明保险人履行明确说明义务时的履行方式、说明内容和说明程度，最后针对现实中出现的问题从立法和司法方面提出建议，一方面未来的立法可以以投保人资格规制为中心出发，在保险法十七条中增设一款专门规定团体保险中保险人的明确说明义务，另一方面司法机关在审判中应该注意团体保险中保险人明确说明义务履行方式的多样化以及被保险人的文化程度和职业类型对明确说明义务的影响，并且需要在裁判文书中明确说明做出此种判决的理由。

关键字：团体保险；明确说明义务；被保险人

# Abstract

Although China's Insurance law stipulates the insurer's express obligation, and clearly stipulates that its obligation to explain should be performed to the policyholder, there is no clear provision on the "insurance law" of China's insurance law about group insurance .Some courts apply the general provisions of the Insurance law to hear cases in which the insurer is expressly stated in the insurance of the group concerned, believing that the object of performance of the insurer's Express obligation does not include the insured, but that the outcome of such a trial is sometimes contrary to the fundamental value of the legal that is fair,

Some courts occupy the interests of the vulnerable group, that is, the insured party that the insurer's explicit obligation includes the insured, in the judicial practice has appeared the phenomenon of different court decisions. In order to solve this phenomenon which is detrimental to judicial authority, the author analyzes the problem through literature review and case study method. The existing literature is divided into two views on this issue, and holds that the object of performance of the insurer's explicit stated obligation includes the argument of the party of the insured from the principle of good faith, the principle of consent, the special protection of the financial consumer and the legislative purpose of the insurance law, and the other party considers The main reason is that the policyholder is a party to the group Insurance contract, based on the relativity of the subject's rights and obligations, should not expand the insurer's obligations.

Although the existing literature has carried on the detailed research to this, but has not responded to the other party's point of view, nor has the relevant case concrete analysis how the judge should deal with this kind of question in the judicial practice. The author makes his own choice on the two-party point of view, and holds that the performance object of the insurer's explicit statement of obligation includes the insured, which is mainly demonstrated from two aspects, on the one hand, from the history of the development of the group Insurance system, the particularity of group Insurance and the Insurance law Legislation on

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