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**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
Tuesday, February 16, 2021  
2:00 p.m.  
Via Videoconference**

**On the following measure:  
H.B. 285, H.D. 1, RELATING TO INSURANCE**

Chair Johanson and Members of the Committee:

My name is Colin M. Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The Department appreciates how H.D. 1 requires the auditor to conduct an impact assessment report on the social and financial impacts of prohibiting health insurance companies from denying coverage for certain types of health care on the basis of gender identity, if the policy, contract, plan, or agreement covers those treatments for purposes other than gender transition.

Pursuant to Hawaii Revised Statutes section 23-52, the contents of the auditor's report should include, among other items: (1) an actuarial analysis of the effect this bill

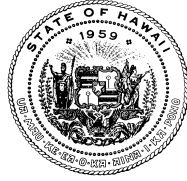
would have on insurance premiums; and (2) the cost of any defrayals the State may be liable for in the future.<sup>1</sup>

Thank you for the opportunity to testify on this bill.

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<sup>1</sup> The addition of new mandated coverage may trigger section 1311(d)(3) of the federal Patient Protection and Affordable Care Act (PPACA), which requires states to defray the additional cost of any benefits in excess of the essential health benefits of the State's qualified health plan under the PPACA.

DAVID Y. IGE  
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony COMMENTING on HB 285 HD 1  
RELATING TO INSURANCE**

REPRESENTATIVE AARON LING JOHANSON, CHAIR  
REPRESENTATIVE LISA KITAGAWA, VICE CHAIR  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing Date: 2/16/2021

Hearing Time: 2:00 PM

1 **Department Position:** The Department of Health (“Department”) offers comments and  
2 recommendations on the following measure and defers to the Department of Commerce and  
3 Consumer Affairs.

4 **Department Testimony:** The subject matter of this measure intersects with the scope of the  
5 Department’s Behavioral Health Administration (BHA) whose statutory mandate is to assure a  
6 comprehensive statewide behavioral health care system by leveraging and coordinating public,  
7 private and community resources. Through the BHA, the Department is committed to carrying  
8 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and  
9 person-centered.

10 In line with this person-centered vision, the Department strongly advocates to increase  
11 access to gender affirming treatments for individuals in the sexual and gender minority. Access  
12 to these treatments is absolutely a medical necessity and often a matter of life and death for  
13 transgender community members. In the largest American study of transgender adults, those  
14 whose identification card matched their preferred name and gender had lower rates of suicidal  
15 ideation and suicide planning.<sup>1</sup> Years of research also clearly posit that gender-affirming

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<sup>1</sup> Scheim, A. I., Perez-Brumer, A. G., & Bauer, G. R. (2020). Gender-concordant identity documents and mental health among transgender adults in the USA: a cross-sectional study. *The Lancet Public Health*, 5(4), e196-e203.

1 medical therapy in childhood is linked to improved psychological functioning for gender-variant  
2 children and adolescents.<sup>1</sup> Though transgender youth have higher rates of depression,  
3 suicidality, and self-harm than their cisgender peers (i.e., youth whose gender identity matches  
4 their sex assigned at birth)<sup>2</sup>, socially or medically transitioned children demonstrate no  
5 differences in well-being when compared to their siblings or cisgender peers.<sup>3</sup> This finding is  
6 particularly notable, when you consider that transgender adults have a prevalence of past-year  
7 suicide attempts that is about eighteen times higher than the U.S. general population.<sup>4</sup> From a  
8 financial standpoint, increasing access to these medically necessary treatments will not only  
9 save lives, but provide cost-savings in mental health care and adjacent fields.<sup>5</sup>

10 Clearly, all evidence points to the absolute necessity of ensuring that individuals in the  
11 sexual and gender minority can easily access gender-affirming treatments.

12 **Offered Amendments:** In order to fully protect the health of individuals seeking gender  
13 affirming treatments for medically necessary reasons, we support an expedited audit to  
14 facilitate enactment of the intent of the original bill.

15 Thank you for the opportunity to testify on this measure.

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<sup>2</sup> Connolly et. al. (2016). The mental health of transgender youth: Advances in understanding. *Journal of Adolescent Mental Health*. 59, 489-495.

<sup>3</sup> Durwood, L, Mclaughlin, KA, & Olson, KR. (2017). Mental health and self-worth in socially transitioned transgender youth. *J Am Acad Child Adolesc Psychiatry*. 56(2):116–123.

<sup>4</sup> Herman, J.L., Brown, T.N.T., & Hass, A.P. (2019). *Suicide Thoughts and Attempts Among Transgender Adults*. UCLA School of Law, Williams Institute. Retrieved from <https://williamsinstitute.law.ucla.edu/publications/suicidality-transgender-adults/>

<sup>5</sup> Padula WV, Heru S, Campbell JD. Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis. *J Gen Intern Med*. 2016 Apr;31(4):394-401.

**HB-285-HD-1**

Submitted on: 2/12/2021 11:51:56 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawai'i, Hawaii's oldest and largest policy and political LGBTQIA+ focused organization, supports HB 285.

Mahalo nui loa for your time and consideration,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawai'i

Testimony of  
John M. Kirimitsu  
Legal and Government Relations Consultant

Before:  
House Committee on Consumer Protection  
The Honorable Aaron Ling Johanson, Chair  
The Honorable Lisa Kitagawa, Vice Chair

February 16, 2021  
2:00 pm  
Via Videoconference

### **HB 285, HD1 Relating to Health**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on this measure regarding gender transition services.

#### **Kaiser Permanente Hawaii supports this bill, as amended.**

Kaiser Permanente Hawaii supports the amended version of this bill requesting a social and financial impact assessment report, as statutorily required under Sections 23-51 and 23-52 of the Hawaii Revised Statutes. We also note that any addition of a new mandated coverage may trigger section 1311(d)(3) of the federal Patient Protection and Affordable Care Act, which requires states to defray the additional cost of any benefits enacted after December 31, 2011, in excess of the State's essential health benefits.

Thank you for your consideration.



Committee: Committee on Consumer Protection & Commerce  
Hearing Date/Time: Tuesday, February 16, 2021, 2:00 p.m.  
Place: Via videoconference  
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 285, H.D.1, Relating to Insurance

Dear Chair Johanson, Vice Chair Kitagawa, and Members of the Committee on Consumer Protection & Commerce:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in support of H.B. 285, H.D.1 but asks that the Committee revert it to its original form.** An audit is wholly unnecessary, as this bill simply clarifies health insurers' obligations under existing state law.

As introduced, H.B. 285 provides helpful guidance to Hawai'i's health insurance providers and clarifies providers' obligations under Act 135, Session Laws of Hawai'i 2016, Hawai'i Revised Statutes §431:10A-118.3, which prohibits health insurance discrimination in participation or coverage under a policy against any person on the basis of the person's actual or perceived gender identity. Since the law's passage, however, the ACLU of Hawai'i has received complaints that health insurance providers are not complying with the law, leaving many patients in a state of uncertainty about their rights and how to receive the medically necessary care to which they are entitled. Specifically, we have received reports that health insurance providers are violating HRS §431:10A-118.3(b)(4)(A), which requires coverage for services relating to gender transition, providing that there is coverage under the policy for those services when they are unrelated to gender transition.

As introduced, H.B. 285 addresses this problem with noncompliance by clarifying the types of services that *may* be included as transition-related care. This offers guidance to health insurance providers and ensures parity in coverage for transition-related care, only when those services are already covered for purposes other than gender transition.

H.B. 285, H.D.1, reflects the erroneous concerns raised by health insurance providers that such an audit is required under HRS § 23-51. HRS § 23-51 requires an audit to assess social and financial effects prior to the enactment of any new mandate for specific health services. As explained above, however, H.B. 285, as introduced, does not create a new mandate; it merely

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ACLU of Hawai'i testimony in support of H.B. 285, H.D. 1  
February 16, 2021  
Page 2 of 2

clarifies existing obligations. Therefore, H.B. 285, H.D.1's audit is unnecessary, as H.B. 285 does not mandate coverage that is not already required under Hawai'i law.

For the above reasons, the ACLU of Hawai'i requests that the Committee support this measure and revert it to its original form.

Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes  
Policy Director  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

American Civil Liberties Union of Hawai'i  
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[www.acluHawai'i.org](http://www.acluHawai'i.org)



**HB-285-HD-1**

Submitted on: 2/12/2021 8:14:22 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Goljuch, Sr.	Individual	Support	No

Comments:

Please pass HB285.

**HB-285-HD-1**

Submitted on: 2/13/2021 7:47:34 AM

Testimony for CPC on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Itai Bradshaw-Lang	Individual	Comments	No

Comments:

Please revert this bill back to its original form!

The original version of HB285 would clarify existing laws and benefit our entire community **including insurance companies**. Unfortunately, insurance companies in Hawai'i are skirting both federal and state law by not covering surgeries for transgender people, which are medically necessary.

In response to this measure, insurance companies requested an audit, which is completely unnecessary, not legally required, and an enormous waste of resources during a pandemic when the state is facing billion dollar shortfalls for the next few years.

Please read this article and study explaining how it's actually financially beneficial for insurance companies to cover all medically necessary surgeries  
- <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

Also, please note that these surgeries are a matter of life and death for many of our transgender community members. Delaying the enactment of this law with an unnecessary audit is simply cruel.

Mahalo for your time and consideration of this vital issue.

**HB-285-HD-1**

Submitted on: 2/13/2021 5:38:13 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tami Whitney	Individual	Comments	No

Comments:

Aloha Chair Johanson and Honorable Members,

Please revert the bill back to its original form! The original version of HB285 would clarify existing laws and benefit our entire community including insurance companies. Unfortunately, insurance companies in Hawai'i are skirting both federal and state law by not covering surgeries for transgender people, which are medically necessary.

In response to this measure, insurance companies requested an audit, which is completely unnecessary, not legally required, and an enormous waste of resources during a pandemic when the state is facing billion dollar shortfalls for the next few years.

Please read this article and study explaining how it's actually financially beneficial for insurance companies to cover all medically necessary surgeries - <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

Also, please note that these surgeries are a matter of life and death for many of our transgender community members. Delaying the enactment of this law with an unnecessary audit is simply cruel.

Mahalo,

Tami Whitney

Jaime Stevens, MD, MPH  
1177 Queen St. #2707  
Honolulu, HI, 96814

February 14, 2021

Hawai'i State Legislature

Re: Testimony in Opposition of amendments to HB285 HD1

Honourable Chair Johanson and committee members,

I am a child, adolescent, and adult psychiatrist on O'ahu writing to support the original version of HB 285 requiring insurance companies to cover medically necessary procedures consistent with state and federal law.

The proposed version contains an unnecessary audit which adds not only direct cost, but also delay in medical care, which in turn increases risk not only for medical complications but increased financial burden to the state associated with those complications.

Mahalo nui loa for your consideration in protecting the health and welfare of all of your constituents.

Jaime Stevens, MD, MPH, FAPA

**HB-285-HD-1**

Submitted on: 2/14/2021 10:35:37 AM

Testimony for CPC on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kunane Dreier	Individual	Comments	No

Comments:

February 14, 2021

Aloha Chair Johanson and Honorable Members,

Please revert the bill back to its original form! The original version of **HB285** would clarify existing laws and benefit our entire community including insurance companies. Unfortunately, insurance companies in Hawai'i are skirting both federal and state law by not covering surgeries for transgender people, which are medically necessary.

In response to this measure, insurance companies requested an audit, which is completely unnecessary, not legally required, and an enormous waste of resources during a pandemic when the state is facing billion-dollar shortfalls for the next few years.

Please read this article and study explaining how it is actually financially beneficial for insurance companies to cover all medically necessary surgeries - <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

Also, please note that these surgeries are a matter of life and death for many of our transgender community members. Delaying the enactment of this law with an unnecessary audit is simply cruel.

Mahalo,

Kunane Dreier

Community Member

LGB&T Program & Capacity Building Manager

Hawaii Health & Harm Reduction Manager

**HB-285-HD-1**

Submitted on: 2/14/2021 11:50:28 AM

Testimony for CPC on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
roxanne koster	Individual	Comments	No

Comments:

Aloha Chair Johanson and Honorable Members,

Please revert the bill back to its original form! The original version of HB285 would clarify existing laws and benefit our entire community including insurance companies. Unfortunately, insurance companies in Hawai'i are skirting both federal and state law by not covering surgeries for transgender people, which are medically necessary.

In response to this measure, insurance companies requested an audit, which is completely unnecessary, not legally required, and an enormous waste of resources during a pandemic when the state is facing billion dollar shortfalls for the next few years.

Please read this article and study explaining how it's actually financially beneficial for insurance companies to cover all medically necessary surgeries - <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

Also, please note that these surgeries are a matter of life and death for many of our transgender community members. Delaying the enactment of this law with an unnecessary audit is simply cruel.

Mahalo,

Roxanne Koster

**HB-285-HD-1**

Submitted on: 2/14/2021 4:27:51 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kevin Tomita	Individual	Comments	No

Comments:

Aloha Chair Johanson and Honorable Members,

Please revert the bill back to its original form! The original version of HB285 would clarify existing laws and benefit our entire community including insurance companies. Unfortunately, insurance companies in Hawai'i are skirting both federal and state law by not covering surgeries for transgender people, which are medically necessary.

In response to this measure, insurance companies requested an audit, which is completely unnecessary, not legally required, and an enormous waste of resources during a pandemic when the state is facing billion dollar shortfalls for the next few years.

Please read this article and study explaining how it's actually financially beneficial for insurance companies to cover all medically necessary surgeries - <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

Also, please note that these surgeries are a matter of life and death for many of our transgender community members. Delaying the enactment of this law with an unnecessary audit is simply cruel.

Mahalo,

Kevin Tomita





**HB-285-HD-1**

Submitted on: 2/14/2021 6:45:35 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Breanna Zoey	Individual	Support	No

Comments:

Hi. My name is Bree. I am transgender. My pronouns are she/her. I support this legislation, but NOT as it stands in HD1. **If state legislators really care about the transgender people in Hawaii, you will have this proposed legislation reverted to resemble what it was initially and then keep it moving along.**

We must require health insurance companies to stop discriminating against transgender people like me and not allow these companies to make it intentionally difficult to access the services and care that trans people so desperately need. Changing this legislation to require an impact assessment to determine the social and financial impacts [of continuing to allow insurance companies to discriminate] is total bologna, and we already have this information available today.

I am transgender and can tell you firsthand that the way we allow insurance companies to dictate what they will or will not cover for trans people is a catastrophic failure. The current system demonstrates how these companies, as well as some of our appointed insurance officials, really do not care about the lives of trans people. Every year that we allow the current system to prevail is another year of struggles that the trans community is forced to endure. This far too often results in worsening anxiety and depression, alcohol or drug abuse, inflicting self-harm, closing oneself off from society, and in general not feeling that our lives as trans people mean anything to the world or are worth of basic health care. To anyone who dare suggest trans health care is “not medically necessary,” I challenge you to talk with some trans folks and ask how the current lack of health care equity has affected their lives, whether that be financially, socially, emotionally or professionally; take your pick.

Also, when some of these big insurance companies say things like ‘as a supporter of the LGBTQ+ community...’ I challenge them to answer this question: what have you done, **\*\*\*that was not mandated or forced upon you\*\*\***, to ensure transgender people have access to the health care and services that we need, that you are not discriminating against us, and that you aren’t directly making our lives worse? You continue to oppose legislation that would improve access to care and reduce discrimination for trans people, so please tell me how you are supporting the community. You are not supporting me as a transgender individual when it comes to health care right now.

I have heard stories of transgender people, in our own state, ending their lives in part due to the continuous denials and refusal of care that insurance companies throw our way each and every day. Please tell me how health care for transgender people is “not medically necessary” when lives are literally hanging in the balance, and when health insurance denials so drastically contribute to elevated levels of stress, alcohol/drug abuse, anxiety, depression and even suicide. These health insurance companies are partly responsible for harming the lives of people. What is it going to take to open peoples’ eyes on this matter?

All I want is to be able to live my life and feel as though it means something to the world, and to be afforded with the basic health care services that I need as a trans person. As elected officials (and some appointed officials who have power) you have so much opportunity to improve the landscape of health care for trans people like me. There really is ZERO reason why trans people should not be afforded access to the basic health care that we need. Please, allow this bill to return to its original intent and pass it.

Thank you  
-Bree (she/her)

**HB-285-HD-1**

Submitted on: 2/14/2021 9:10:02 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eileen McKee	Individual	Support	No

Comments:

I support HB 285.

Mahalo for your consideration of my testimony.

Eileen McKee

**HB-285-HD-1**

Submitted on: 2/15/2021 7:34:38 AM

Testimony for CPC on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jenifer Jenkins	Individual	Support	No

Comments:

Aloha Chair Johanson and Honorable Members,

Please revert the bill back to its original form! The original version of HB285 would clarify existing laws and benefit our entire community including insurance companies. Unfortunately, insurance companies in Hawai'i are skirting both federal and state law by not covering surgeries for transgender people, which are medically necessary.

In response to this measure, insurance companies requested an audit, which is completely unnecessary, not legally required, and an enormous waste of resources during a pandemic when the state is facing billion dollar shortfalls for the next few years.

Please read this article and study explaining how it's actually financially beneficial for insurance companies to cover all medically necessary surgeries - <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

The original version of this bill passed with no audit, and one is not needed today. Also, please note that these surgeries are a matter of life and death for many of our transgender community members. Delaying the enactment of this law with an unnecessary audit is simply cruel.

Mahalo,

Jenifer Jenkins

**HB-285-HD-1**

Submitted on: 2/15/2021 5:01:50 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
B Connors	Individual	Comments	No

Comments:

**The purpose of this comment is to clarify a portion of Kaiser Permanente's late testimony from February 9, 2021, which was somewhat misleading and may create a perception that there is a larger Affordable Care Act (ACA) impact than actually exists. According to KP's testimony:**

*"We also note that any addition of a new mandated coverage may trigger section 1311(d)(3) of the federal Patient Protection and Affordable Care Act, which requires states to defray the additional cost of any benefits enacted after December 31, 2011, in excess of the State's essential health benefits."*

**While not a factually incorrect statement by any means (note KP's use of "may"), I believe the individual providing testimony failed to specify that this is a requirement only of Qualified Health Plans (QHPs), as defined by section 1301 of the ACA. In general, QHPs are Exchange-certified plans, which for Hawaii means those plans that are certified by the federal government each year and are sold through healthcare.gov. Hawaii participates in the federal Exchange and has QHPs only through HMSA and Kaiser, and historically has state-wide enrollment in these plans in the bottom 5% of the nation (states & territories), largely thanks to our Prepaid law and expansion of Medicaid.**

**Please keep this ACA argument made by the insurance company in perspective. There is not a broad and significant ACA impact here as was suggested. In its original intent prior to HD1, the proposed legislation would arguably apply to QHPs, however I believe that the language and a reasonable interpretation of the ACA would not trigger a significant ACA (PP-ACA) impact, and that the ACA actually allows for states to implement state-wide coverage mandates with minimal burden to ensure we have the flexibility to continue evolving with the ever-changing world.**

**HB-285-HD-1**

Submitted on: 2/16/2021 9:28:01 AM

Testimony for CPC on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nikki-Ann Yee	Individual	Comments	No

Comments:

Aloha Chair Johanson and Honorable Members,

Please revert the bill back to its original form! The original version of HB285 would clarify existing laws and benefit our entire community including insurance companies. Unfortunately, insurance companies in Hawai'i are skirting both federal and state law by not covering surgeries for transgender people, which are medically necessary.

In response to this measure, insurance companies requested an audit, which is completely unnecessary, not legally required, and an enormous waste of resources during a pandemic when the state is facing billion dollar shortfalls for the next few years.

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- <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

Also, please note that these surgeries are a matter of life and death for many of our transgender community members. Delaying the enactment of this law with an unnecessary audit is simply cruel.

Mahalo,

Nikki-Ann Yee

**HB-285-HD-1**

Submitted on: 2/16/2021 12:18:30 PM

Testimony for CPC on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dana Keawe	Individual	Support	No

Comments:

Please support HB285